

OVERVIEW OF CHAPTER 40B

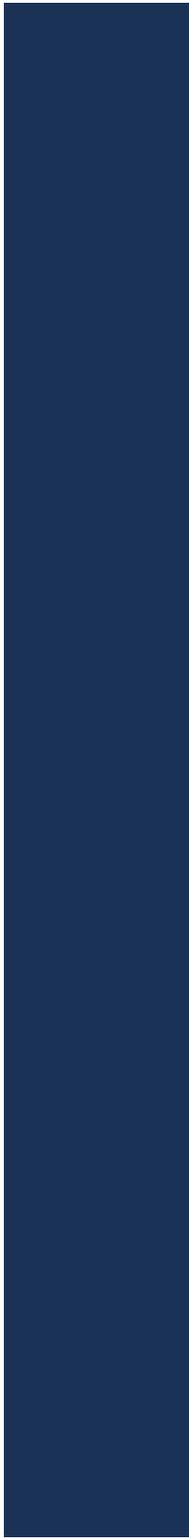
The Comprehensive Permit Law



What is Chapter 40B?

- **The Commonwealth's regional planning law**
- In 1969, the legislature added the affordable housing part – Sections 20-23 – to address *regional* housing disparities
- Law assumes communities have met their regional “fair share” if at least 10% of their housing stock is included in the **Subsidized Housing Inventory (SHI)**, affordable to low-income people, and subsidized by a federal or state program





50

CELEBRATING EQUALITY
THE FAIR HOUSING ACT
1968 - 2018

fiftyyears

What is “Affordable Housing”? (capital A)

Counts towards the state’s 10% affordable housing goal for every community

Affordable to households with income at or below 80% of the area median income (AMI)

Made available on a fair and open basis to income-eligible families

Income limits



Most federal housing programs use percentages of Area Median Income (AMI) for income limits.



AMI accounts for differences in wealth and recognizes that housing prices have an impact on choices available to homeowners and renters.



For Walpole: Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area

What does 80% AMI mean?

- FY2019 HUD Income Limits
- Norfolk



Fair Housing

To “count” on the **SHI**, affordable housing must be made available to all income-eligible people in a large area – at least the area used to set income limits.

Housing must be offered for sale or rent under a state-approved Affirmative Fair Housing Marketing Plan.

Some “local preference” may be allowed.

Not within the Board’s jurisdiction!

State AI Findings (2013)

“Most analysts agree that an adequate housing supply can help stabilize prices and enhance affordability ... [but there are] widespread barriers to multifamily housing, town homes, single family houses on small lots, and accessory apartments in owner-occupied homes.”



State AI Findings (2013)

“Proliferation of age restricted development, and not the production of housing for younger families – unless permitted under the state’s affordable housing statute, M.G.L. Chapter 40B – raise serious civil rights concerns.”



Policy Response

Local Initiative Program Policy Regarding Restrictions on Children in Age-Restricted 55+ Housing (2-18)

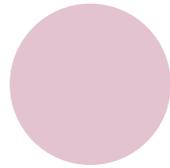
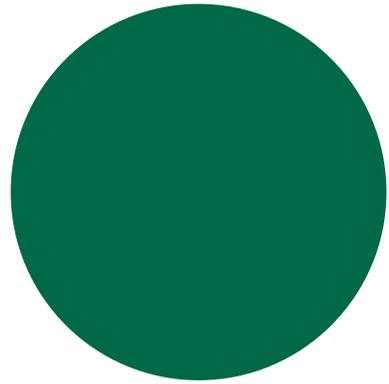
- “Families with children ... face particular barriers in accessing affordable housing across the Commonwealth.”
- “DHCD’s practice is not to approve affordable units under LIP or LAUs in age-restricted housing if selection or occupancy policies, special permits or other zoning approvals, or underlying zoning would exclude persons 18 years of age or younger ...”

Policy Response



INTERAGENCY AGREEMENT: Regarding Housing Opportunities for Families with Children (2014)

“Consistent with the AI ... at least 10% of the units in affordable developments funded, assisted, or approved by a State Housing Agency shall have 3+ bedrooms . . . To the extent practicable, the three bedroom or larger units shall be distributed proportionately among affordable and market rate units.”



Basic Requirements

**Chapter 40B
Comprehensive
Permit Process**

Statutory Minima/ Regulatory Requirements

- Less than 10% of year-round housing units
- Walpole:
 - 8,984 units/Census 2010 year-round base
 - 7.1%
- The 1.5% “general land area” rule
- The 0.3% (in one calendar year) rule

Safe Harbor Provisions

- Housing Production Plan (HPP)
- Recent Progress Toward Housing Unit Minimum
- Review of Large Projects
- Related Applications

These are regulatory options not found in the statute.

Critical 40B Application Submission Requirements

- Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization
- Evidence of Site Control
- Project Eligibility Letter from Subsidizing Agency

40B Application Submission Requirements

- Preliminary Plans versus Final Plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- A tabulation of proposed buildings by type, size and ground coverage
- A preliminary subdivision plan (if applicable)
- A preliminary utilities plan
- A list of requested waivers

Noticing and conducting the required public hearing

7/14/**30**/15/15/30/180/40
/20 DAYS

Chapter 40B Performance Requirement Deadlines

Distribute Application - 7 Days

Notice of Public Hearing – 14 Days

Open Public Hearing - Within 30 days

Safe Harbor Notification - 15 days

Applicant appeal safe harbor - 15 days

DHCD Answer - 30 days

Close Hearing - 180 days

Decision - 40 days

Appeal - 20 days

Scheduling a Site Visit

- Conduct a site/neighborhood visit early in the review process
- Understand...
 - Site and neighborhood existing conditions
 - The proposed site plan and building design
 - The location of abutters who will be most affected by the proposed development



Retaining Peer Review Consultants

- Employment of outside consultants at the applicant's expense
- Civil Engineering, Traffic, Architecture (typical)
- Financial – only if necessary
- Review of studies prepared on behalf of the Applicant, **not preparation of independent studies desired by the Board**
- All written results and reports are made part of the record

Getting Relevant Information

- Focus on the “real” project issues/impacts early in the review process
- If needed, request additional information from the Applicant as long as the information involves matters within the Board’s jurisdiction
- Don’t hesitate to ask for graphics that help clarify height, massing, setbacks and overall relationship to neighbors



Comprehensive Permit: Scope



Board of Appeals has jurisdiction over all approvals under *local* regulations, such as:

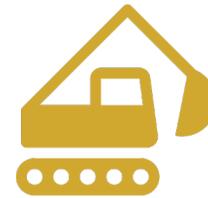
Zoning

Subdivision Control

Local wetlands, septic system regulations

Historic district

Scenic roads



May grant waivers necessary to allow construction of proposed development

Comprehensive Permit: Scope



- *Not* within ZBA's purview:
 - Impact on municipal & school services available to all residents of the community (but direct impact on nearby infrastructure may be within ZBA's purview)
 - Fiscal impact studies
 - Tenant/homebuyer selection
 - Profit monitoring
 - Market study
 - Income limits, affordability

Negotiation and Work Sessions

- **Negotiating with developers *is* possible**
- **Work sessions with developers can often be productive after initial more formal public hearings.**
- **All discussions during the session are advisory in nature.**
- **No decisions can be made**
- **Comply with Open Meeting Law**
- **Check with your Town Counsel**

Balance Regional Housing Needs with Local Concerns

**Planning that includes facilitating affordable housing development in specific areas and the plan has been implemented.*



Health



Safety



Environmental



Design



Open Space



Planning*



Holding Deliberation Sessions

- Deliberate in a logical and orderly fashion
- Discuss potential conditions
- Review the requested waivers
- Ideally, discuss before closing the public hearing so applicant and public know what to expect

Drafting and Issuing the Comprehensive Permit decision

The ZBA has three decision alternatives:

- Denial
- Approval as submitted
- Approval with conditions

Be sure to Town Counsel reviews a draft of your decision before you file it with the Town Clerk!



Approval with Conditions

- The conditions should not make the Project Uneconomic
- Conditions and/or requirements must be consistent with Local Needs
- The Board may not reduce the number of units for reasons other than evidence of Local Concerns within the Board's purview



Appeal of Decision

- Appeals by the Applicant are made with the Housing Appeals Committee (HAC)
- Appeals for other aggrieved parties are made with Superior Court or the Land Court

Post- Comprehensive Permit

Applicants must submit to the subsidizing agency for Final Approval.

Final engineering and architectural plans accompany application for a building permit.

Changes requested to the Comprehensive Permit must be deemed substantial or insubstantial within 20 days of receiving applicant's request

Post-Comprehensive Permit, cont'd



Regulatory Agreement, Deed Riders, and Monitoring Agreement



Lottery and fair housing



Income, asset and first-time buyer status requirements for affordable units



Lapse of the permit



Transfer of the Comprehensive Permit



Inspections during construction

Questions?



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**Massachusetts
Housing Partnership**

Moving affordable housing forward

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